

MEMORANDUM FOR : Admiral Turner

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Legal Relationship of the DCI and the Assistant
to the President for National Security Affairs

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1. [] has relayed to this Office your request for a paper on the laws, regulations and directives that govern the relationship of the DCI and the Assistant to the President for National Security Affairs.
 2. President Carter, on 20 January, issued a directive which, among other things, prescribes certain relationships of the Director and the Assistant for National Security Affairs. But that directive (designated as "Presidential Directive/NSC-2"), copy attached at Tab A, does not establish a command or subordinate position for either of those two officials in relation to the other. It does establish certain committees with the National Security Assistant and the Director as members. Each also is chairman of at least one committee. It also provides that the National Security Assistant and the Director, and other named officials, are to "attend appropriate NSC meetings."
 3. Aside from PD/NSC-2, there are very few Executive orders or other directives relevant to the question and there are no directly relevant statutes. It is to be noted that the National Security Act of 1947 established the National Security Council and CIA "under the National Security Council" with certain duties to be performed "under the direction of the National Security Council." The Council is composed of the President, the Vice President, the Secretary of State and the Secretary of Defense. The Act provides that the Council "shall have a staff to be headed by a civilian executive secretary" (a position which has not been filled since 1969). The statute does not refer to or contemplate in any way an Assistant to the President for National Security Affairs and does not subordinate the Director, or the Agency, to the NSC staff. The relevant provisions of the National Security Act are attached at Tab B.

4. We are advised by Mrs. Jeanne Davis, the staff secretary to the National Security Council, that through the years the Presidents have not in writing instructed or authorized the National Security Assistant to supervise or direct the NSC staff, but they have given oral instructions to that effect and the National Security Assistants in fact have supervised and directed the work of the NSC staff. They have also issued directives and instructions to the agencies, including of course to CIA and other Intelligence Community agencies. Generally these directives have been issued in the form of memoranda on NSC letterhead, addressed to specified agency heads, and signed by the Assistant to the President for National Security Affairs.

5. Another directive signed by President Carter on 20 January "Presidential Directive/NSC-1" (attached at Tab C) abolished the two types of directives theretofore used for NSC matters (National Security Study Memoranda and National Security Decision Memoranda) and established instead two new categories of instruments - Presidential Directives (PDs)/NSC, of which that 20 January directive was number 1, and Presidential Review Memoranda (PRMs)/NSC. The two new categories of instruments were "established to direct the work of the National Security Council and participating agencies." PDs/NSC are to be used "to promulgate Presidential decisions on national security matters." PRMs/NSC will "direct that reviews and analyses be undertaken by the departments and agencies." PD/NSC-1 does not indicate who will have the authority to sign these NSC instruments and who, in fact, will do so. PD/NSC-1 and 2 were signed by the President and I believe no additional ones have been issued. A number of PRMs/NSC have been issued, most, if not all, signed by the Assistant to the President for National Security Affairs. It may be that the intention is that the President will sign the former directives and Mr. Brzezinski the latter.

6. The basic Executive order governing the intelligence agencies is Executive Order 11905, issued in February 1976 by President Ford to confer authorities and responsibilities on the various intelligence agencies, to provide for accountability, responsibility and oversight mechanisms within the executive branch and to place certain restrictions on the intelligence agencies. Under that Order, the Special Assistant for National Security Affairs and the Director are members of the Operations Advisory Group (OAG), also established by the Order and charged with considering and developing policy recommendations "for the President prior to his decision on each special activity in support of national foreign policy objectives" (covert actions) and with certain other specified functions. Under the Order, the chairman of OAG was to be designated by the President and General Scowcroft was so designated.

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7. PD/NSC-2, which, as mentioned, sets up NSC committees and otherwise regulates the NSC function, is in the form of a Presidential memorandum addressed to certain agency heads and the Vice President. The committees established by that directive are intended to succeed and replace certain committees established by Executive Order 11905, including the Operations Advisory Group. In view of the intention that the committees established by PD/NSC-2 replace similar committees established by Executive Order 11905, Mr. Brzezinski on 26 January requested the Attorney General to submit a proposed amendment to Executive Order 11905 to replace the latter committees. We are advised that an amendment to Executive Order 11905 has been prepared by the Department of Justice and forwarded to Mr. Brzezinski.

8. A PRM/NSC is being developed by the NSC staff, in consultation with the agencies, which would direct a review and study of the effectiveness of the intelligence effort and procedures and mechanisms under Executive Order 11905. That study likely would result in additional amendments to Executive Order 11905.

9. A directive which indirectly regulates the relationship between the President's Assistant for National Security Affairs and the DCI is the provision of Executive Order 11905 which authorizes the Director to act "as the President's primary adviser on foreign intelligence and provide him and other officials in the executive branch with foreign intelligence."

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[Redacted Signature]

Anthony A. Lapham

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